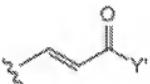


**REMARKS**

I. **Claim Status**

Claims 11-16 are pending. The Examiner has withdrawn claims 14-16 from consideration as being directed to a non-elected invention. Dec. 11, 2009, Final Office Action at 2. Without prejudice or disclaimer, claim 11 has been amended herein to delete the following -X' structure:

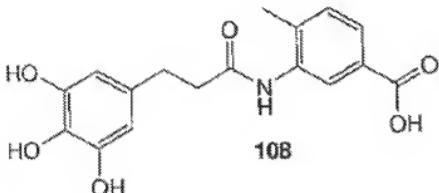


Thus, no new matter has been added.

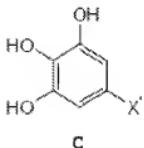
Applicants respectfully acknowledge that the Examiner has withdrawn the rejection of claims 11, 12, and 14-16 under 35 U.S.C. § 103 based on Blaakmeer et al., "Structure-Activity Relationship of Isolated Avenanthramide Alkaloids and Synthesized Related Compounds as Oviposition Deterrents for *Piers Brassicae*," Journal of Natural Products, 57(8):1145-51 (1994) ("Blaakmeer") and that "compound 4 appears to be free of the art." Aug. 6, 2010, Office Action at 2-4.

II. **Rejection Under 35 U.S.C. § 103(a)**

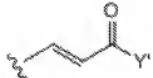
While the Examiner states that the Declaration submitted in Applicants' previous response is "sufficient to overcome the rejection based on compound 108 (a specie of compound 4), the results for compound 108 are not commensurate in scope with all the compound of the instant claim 11." Aug. 6, 2010, Office Action at 3. Compound 108 has the following structure:



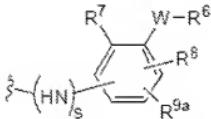
The Examiner has expanded examination to a composition of claim 11 having the following structure:



where X' is



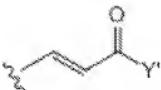
where Y' is



*Id.* at 3-4.

The Examiner now rejects this compound of claims 11-13 under 35 U.S.C. § 103(a) over Blaakmeer in view of Patani et al., "Bioisosterism: A Rational Approach in Drug Design," Chem. Rev., 96:3147-76 (1996) ("Patani"), for the reasons set forth on pages 5-9 of the August 6, 2010, Office Action.

Although Applicants respectfully disagree with the Examiner, solely in order to expedite prosecution, Applicants have amended claim 11 to delete the following -X' structure:



As discussed in an earlier response, Blaakmeer discloses compounds that do not read on the claimed compounds, and one of ordinary skill in the art would not have been motivated to modify the compounds disclosed in Blaakmeer such that they would read on the amended claimed compounds. Accordingly, Applicants respectfully submit that the amendment obviates the rejection and it should be withdrawn.

### **III. Double Patenting Rejection**

The Examiner rejects claims 11-13 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 12/067,059 ("the '059 application"). See Aug. 6, 2010, Office Action at 10-11. The Examiner states that the conflicting claims are not patentably distinct because the compounds of the instant and copending '059 applications are "positional isomers." *Id.* at 3.

Applicants respectfully traverse for the following reasons.

The present application is a National Stage of PCT/EP2005/002920, which was filed March 18, 2005. The '059 application is a National Stage of PCT/EP2006/009153, which was filed September 20, 2006. Applicants respectfully direct the Examiner's attention to M.P.E.P. § 804(I)(B)(1), which states in part:

If a "provisional" nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

Applicants note that the '059 application was filed later than the present application. Accordingly, Applicants respectfully submit that the double patenting rejection should be withdrawn if it is the only rejection remaining in the present application.<sup>1</sup>

**Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any outstanding issues, the Examiner is respectfully invited to contact Applicants' undersigned counsel at (703) 776-9703.

Respectfully submitted,

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Date: November 6, 2010

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<sup>1</sup> Applicants note that they recently responded to an obviousness-type double patenting rejection in the '059 application based on the present application. See Oct. 28, 2010, Response Under 37 C.F.R. § 1.111 at 4-9 in the '059 application.